

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

EXCHANGE BANK OF MISSOURI,

Appellant,

v.

GORDON LEE GERLT and WILLA GERLT,

Respondents.

DOCKET NUMBER WD74206

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: May 22, 2012

APPEAL FROM

The Circuit Court of Howard County, Missouri
The Honorable Scott A. Hayes, Judge

JUDGES

Division Two: Howard, P.J., and Pfeiffer and Mitchell, JJ.

CONCURRING.

ATTORNEYS

Ron Sweet
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Attorney for Appellant,

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Attorney for Respondents.



MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

EXCHANGE BANK OF MISSOURI,)
)
Appellant,)
v.)
GORDON LEE GERLT and WILLA)
GERLT,)
)
Respondents.)

OPINION FILED:
May 22, 2012

WD74206

Howard County

Before Division Two Judges: Victor C. Howard, Presiding Judge, and Mark D. Pfeiffer and Karen King Mitchell, Judges

Exchange Bank of Missouri filed suit against Gordon and Willa Gerlt to recover a deficiency balance related to the Gerlts' promissory note. Part of the Gerlts' collateral for the note was a logging truck. When the Gerlts defaulted on the note, Exchange Bank repossessed and sold the truck, without providing notice to the Gerlts. At trial Exchange Bank claimed there was a deficiency between the amount owed on the loan—\$55,033—and the amount it sold the truck for—\$5,000. To support its claim, Exchange Bank offered the testimony of the truck's buyer, who said he offered the bank \$5,000 for it, but did not testify as to the actual value of the truck. The trial court entered judgment for the Gerlts on Exchange Bank's claim. Exchange Bank timely appeals to this court.

AFFIRMED.

Division Two holds:

- (1) Under section 400.9-626(a)(3), if a secured party does not comply with the requirements of Article 9 of the Missouri Uniform Commercial Code in repossessing and selling collateral, the liability of the debtor is limited to an amount by which the sum of the debt exceeds the greater of: (1) the proceeds of the collection of the debt or (2) the amount of proceeds that would have been realized had the noncomplying secured party complied with Article 9.

(2) As to the proceeds that would have been realized had the noncomplying secured party complied with Article 9, section 400.9-626 creates a presumption that the proceeds of the sale would have been equivalent to the amount of the debt, and the secured party bears the burden of showing what the amount of the recovery would have been if the sale had been made in compliance with Article 9. Without proof of what the sale would have been if made in compliance with Article 9, the secured party is not entitled to a deficiency judgment.

(3) Exchange Bank did not present any evidence of what the truck would have sold for if it had been sold according to Article 9's requirements. Exchange Bank only offered proof of what the truck actually sold for in this noncompliant sale. Thus, the trial court's judgment is affirmed.

Opinion by: Mark D. Pfeiffer, Judge

May 22, 2012

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